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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972

NO.....

THE STATE OF ALABAMA, *Petitioner*

v.

THE UNITED STATES OF AMERICA

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The appellant, the State of Alabama, petitions the Supreme Court of the United States for a Writ of Certiorari to be issued to review the judgment of the United States Court of Claims entered on June 16, 1972.

## OPINION BELOW

On June 16, 1972, the United States Court of Claims issued an opinion declaring that the State of Alabama was not entitled to receive 25% of the money received from sales from national forests in the State of Alabama, pursuant to the *Weeks Act*, 36 Stat. 963 (1911), as amended, as codified in Title 16, U. S. C. A. § 500. The United States Court of Claims granted the United States' Motion for Summary Judgment and denied the State of Alabama's Cross-Motion for Summary Judgment. The order

and opinion of the United States Court of Claims appears as Appendix A, page 15.

## STATUTES INVOLVED

The Weeks Act, 36 Stat. 963 (1911), as amended, as codified in Title 16 U. S. C., § 500, provides:

> Twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one State or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber.

The Knutson-Vandenburg Act, 46 Stat. 527 (1930), as codified in Title 16 U. S. C., § 576(b), provides:

> The Secretary of Agriculture may, when in his judgment such action will be in the public interest, require any purchaser of national-forest timber to make deposits of money in addition to the payments for the timber, to cover the cost to the United States of (1) planting (including the production or purchase of young trees), (2) sowing with tree seeds (including the collection or purchase of such seeds), or (3) cutting, destroying or otherwise

removing undesirable trees or other growth, on the national-forest land cut over by the purchaser, in order to improve the future stand of timber: Provided, That the total amount so required to be deposited by any purchaser shall not exceed, on an acreage basis, the average cost of planting (including the production or purchase of young trees) other comparable national-forest lands during the previous three years. Such deposits shall be covered into the Treasury and shall constitute a special fund, which is appropriated and made available until expended, to cover the cost to the United States of such tree planting, seed sowing, and forest improvement work, as the Secretary of Agriculture may direct: Provided, That any portion of any deposit found to be in excess of the cost of doing said work shall, upon the determination that it is so in excess, be transferred to miscellaneous receipts, forest reserve fund, as a national-forest receipt of the fiscal year in which such transfer is made: Provided further, That the Secretary of Agriculture is authorized, upon application of the Secretary of the Interior, to furnish seedlings and/or young trees for replanting of burned-over areas in any national park.

The jurisdictional statement deals with money which a state is entitled to receive from the sale of forest products sold from national forests located within the boundaries of the state.

## JURISDICTION

This case was initiated by the filing of a petition and claim as provided in 28 U. S. C. A., § 1491, seeking a money judgment against the United States. The

defendant filed a motion for summary judgment and plaintiff filed a cross-motion for summary judgment upon which the case was submitted.

On June 16, 1972, the United States Court of Claims granted defendant's motion for summary judgment, denied plaintiff's cross-motion for summary judgment, and dismissed plantiff's petition. The jurisdiction of this Court is invoked under 28 U. S. C., § 1255(1).

## QUESTIONS PRESENTED

1. Is the United States of America required by Congress to pay the State of Alabama 25% of all moneys received during each fiscal year by the Forest Service from the sale of trees cut from national forests within the state?

2. Did the United States Court of Claims unconstitutionally legislate by approving the administrative fiat of the Forest Service that the Knutson-Vandenburg payments be treated as operating costs rather than as receipts when such payments for standing timber are actually received by the Forest Service and are admittedly included in the payment for the timber sold?

## STATEMENT

1. It was without dispute and settled by the pleadings in the court below that during the fiscal year 1965 to date[1] the State of Alabama received no part of sub-

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1. In accordance with Title 28, U. S. C. A., § 2501, the State acknowledges that recovery is barred as to funds withheld by the United States more than six years prior to January 15, 1971

stantial portions of money received by the Forest Service from the sale of trees in national forests throughout the state. It is settled by the pleadings that during these years the State of Alabama received no percentage of $3,160,334.42.[2] The State's 25% share under the Weeks Act, Title 16 U. S. C. A., § 500, in these receipts is in the amount of $790,084.85 (not including 1971 receipts.)

It was also without dispute in the court below that the sale of trees from national forests in the State of Alabama did, in fact, generate the above monetary amounts.

2. The June 16, 1972 decision of the United States Court of Claims after submission granted the defendant's motion for summary judgment, denied plantiff's cross-motion for summary judgment and denied the petition of the State of Alabama.

## REASONS FOR GRANTING THE WRIT

### I

### THE QUESTIONS PRESENTED ARE SUBSTANTIAL AND ARE OF VITAL PUBLIC CONCERN

The case before the Court involves a subject matter of vital concern to the majority of the states throughout the Nation. Every state with a designated national forest is adversely affected by the opinion of the court below.

The issues are substantial and involve the basic constitutional consideration of legislation by administra-

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2. It is estimated by counsel for the Forest Service that the State of Alabama will receive no percentage of an additional $535,000.00 during the fiscal year 1971.

tive fiat. Petitioners urge that the Act of Congress is clear to the conclusion that the Forest Service of the United States is required by Congress to pay to the states "25% of all moneys received in any fiscal year from each national forest." (Title 16, U. S. C., § 500, supra). Petitioner urges that the mandate of Congress leaves no room for valid administrative adjustment or reduction. The United States on the other hand contended in the court below that the administrative practice of the Forest Service justifies a reduction in the payment made to the states by virtue of "K-V Deposits." The issue is clearly defined and is of fundamental constitutional import—may administrative practice constitutionally be invoked to materially alter and amend the purpose of Congress. Petitioner submits that the purpose of Congress, as stated in the Act, is for the states to receive 25% of "all moneys received" from each national forest.

It was without dispute in the court below and is without dispute here that the deduction of K-V deposits under Title 16, U. S. C., § 576, is discretionary with the Secretary of Agriculture. The species of trees in connection with which such deposits are collected has varied in the past and therefore the many states involved are affected in varying degrees depending on the nature and types of forests involved.[3] The interpretation placed on the Acts of Congress by the Court

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3. In the court below the Forest Service asserted by affidavit that until approximately 1955, Knutson-Vandenburg deposits were required *in addition* to bid prices for the stumpage value of timber. From the exhibits attached to this affidavit, it is seen, however, that *out of twenty-four enumerated tree species*, the "K-V deposit" was required for only three types of trees—loblolly pine, short leaf pine and Virginia pine.

of Claims will have far-reaching and inequitable consequences through the years.[4]

The moneys diverted from the states by the Forest Service are earmarked by Congress to be used for "public roads and public schools". Under the interpretation by the Court of Claims the states will lose millions of dollars annually for these purposes.[5]

The interpretation and construction by the Court of Claims involves strained reasoning and is ultimately based on a hairline distinction between the difference that the Court of Claims saw between payments "in addition to the value of the timber" and payments "in addition to the payment for timber.' This entire reasoning is in the face of the *Weeks Act*, supra, which specifically provides for "twenty-five percentum of all moneys received during any fiscal year from each national forest *shall* be paid" to the states.

The petitioner submits that a question of such vital concern to the public should not be and cannot be put to rest upon the perfunctory distinctions made below, without substantive review by Supreme Court of the United States.

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4. The administrative determination to require "K-V deposits" for only three out of twenty-four species of trees is an example of the inconsistency involved in the discretion employed under the Knutson-Vandenburg Act. The affidavit submitted by the Forest Service on summary judgment fails to set forth any uniform national standard and under the statutory interpretation of the Court of Claims no such standard could realistically exist. Vast and costly improvement could be employed in one area of the county, at the expense of state "schools and roads" while other areas could be spared this loss of revenue.

5. Payments to the states in consideration for reduction in state ad valorem taxes is the crux of the revenue sharing concept. The opinion of the Court of Claims fails to recognize this well established and sound principle.

## II

## THE INTERPRETATION PLACED ON THE APPLICABLE CONGRESSIONAL ENACTMENTS BY THE COURT OF CLAIMS WILL RESULT IN INEQUITABLE AND UNDESIRABLE CONSEQUENCES

The petitioner submits that the interpretation placed on the applicable congressional enactment will result in inconsistencies in the administrative allotments to the several states and will of necessity cause the undesirable consequences of one state receiving more or less revenue than another due to administrative application of the K-V Act to one specie of timber rather than to another or to the discretionary determination of required deductions in one area as opposed to another.

It is settled that the Supreme Court will not attribute to Congress the intention to promulgate a statutory rule which would open the door to obvious inconsistencies and undesirable possibilities. *U. S. v. Dow*, 357 U. S. 17, 78 S. Ct. 1039, 2 L. Ed. 2d 1109; *U. S. v. Katz*, 271 U. S. 354, 46 S. Ct. 513, 70 L. Ed. 986.

## III

## THE COURT OF CLAIMS ERRONEOUSLY INTERPRETED THE PURPOSE OF CONGRESS

The court below concludes that K-V payments are properly treated as "operating costs," yet there is no congressional justification or enabling legislation to support the conclusion. The Court of Claims states that the "K-V assessments reduced the money received in payment for the timber itself." This is not what Congress directed and has the effect of allowing,

nder the guise of statutory construction, a basic hange in congressional directive. It is well settled that ll manner of administrative interpretation cannot con-itutionally be utilized to alter the purpose of Con-ress. Here Congress clearly intended for the states in onsideration for the loss of ad valorem taxes on land eded as national forest to be paid 25% of all moneys eceived from each national forest from the "proceeds f such forest." The purpose is clear. Congress did not se the term "net proceeds" or the phrase "25% after djustment for operating cost." The Court of Claims tates that K-V deposits are not actually moneys re-eived from national forests. The petitioner urges that his is an erroneous conclusion, based on a strained and ll-founded rationale and contrary to congressional mandate. In any event, the decision below presents a ubstantial and vital question which should properly e presented to this Court with briefs on the merits and oral argument for resolution.

## IV

## LANGUAGE EMPLOYED IN THE STATUTES EVIDENCES CLEAR CONGRESSIONAL INTENT

The Supreme Court has specifically ruled that when the mandate of a statute is clear, a resort to legislative history is unnecessary and unwarranted. *Ex Parte Collett*, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207, 10 A. L. R. 2d 921. The sequence, however, in which enactment of the *Weeks Act* and the *Knutson-Vandenburg Act*, together with the actual language employed in these statutes and in the 1944 amendment to the *Weeks Act*, demonstrates the clear expression and clear mandate of Congress.

On May 23, 1908, Congress enacted the following provision (35 Stat. 260):

> Twenty-five percentum of *all moneys* received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the state in which such national forest is situated, to be expended as the state legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one state or county the distributive share to each *from the proceeds of such forest* shall be proportional to its area therein. [Emphasis added]

We call special attention to the fact that the Congress saw fit to use the term *"all moneys,"* and to expressly include the mandatory directive *"shall."*

On June 9, 1930, the *Knutson-Vandenburg Act* was enacted which provides in part as follows (46 Stat. 527, 16 U. S. C., § 576(b):

> The Secretary of Agriculture may, *when in his judgment such action will be in the public interest,* require *any purchaser* of national-forest timber to make deposits of money in addition to the payments for the timber, to cover the cost to the United States of (1) planting (including the production or purchase of young trees), (2) sowing with tree seeds (including the collection or purchase of such seeds), or (3) cutting, destroying, or otherwise removing undesirable trees or other growth on the national-forest land cut over by the purchaser, in order to improve the future stand of timber. . . . [Emphasis added]

Note the use of the word *may* and the additional discretionary nature of the deposit requirements *by the purchaser.*

On September 21, 1944, the Congress amended the original act of 1908 (16 U. S. C., § 500) by adding thereto the following provision (58 Stat. 737):

> In sales of logs, ties, poles, posts, cordwood, pulpwood and other forest products, the amounts made available for schools and roads by this section *shall* be based upon the *stumpage value* of the timber. [Emphasis added]

Note carefully the use of the term "stumpage value" and also once more the inclusion of the clear mandatory directive "shall." The amendment of 1944, coming later than the K-V Act, clearly manifests the positive intention of Congress.

The *Weeks Act* uses the term "shall" in two important instances—the states "shall" be paid 25% of all moneys received, and, payments to the states "shall" be based on the "stumpage value" of the timber. The K-V act as to silviculture deposits provides that the Secretary *may* require purchasers to make deposits in addition to payments for timber. Congress made a clear mandate as to payments of 25% to the states from all moneys received. In requiring silvicultural deposits, the Secretary is afforded the discretion to exercise his judgment. In the context of the usage here involved, there can be no room for doubt or uncertainty that the *Weeks Act* is compulsory in the mandate that the states participate in all moneys received.

In this case, therefore, we have the original *Weeks Act* actually making it compulsory that states be paid 25% of all moneys received by the Forest Service and

we also have the 1944 amendment which compels payment to the states according to the stumpage value of timber sold. The clear import of these directives cannot be altered or changed by the 1930 use of such discretionary wording as: "The Secretary of Agriculture may, when in his judgment such action will be in the public interest, require any purchaser . . .".

The Forest Service insists that its administrative interpretation should be controlling. We respectfully submit that the language of *Weeks* is clear and unambiguous. Administrative interpreation or regulation cannot rewrite an Act of Congress.[6] The Courts have specifically held:

> . . . A right clearly created by statute cannot be taken away by regulation.

*Helvering v. Oregon Mutual Life Insurance Company*, 311 U. S. 267, 61 S. Ct. 207, 85 L. Ed. 180; *Koshland v. Helvering*, 298 U. S. 441, 56 S. Ct. 767, 80 L. Ed. 1268. Administrative agencies, while charged with the responsibility of making an act of Congress work, cannot alter the provisions of a statute.

## V

## CONGRESS CLEARLY INTENDED FOR THE STATES TO RECEIVE 25% OF ALL MONEYS RECEIVED FROM NATIONAL FOREST TIMBER SALES

Congress has clearly and succinctly directed what the states are to receive under *Weeks*. The *K-V Act* is not in conflict with and cannot be held to have re-

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6. The court, in the case of *Cameron Parish v. Hickel*, 302 F. Supp. 689 (1969), expressly reversed as contrary to law the administrative determination to withhold certain funds there involved.

pealed or altered the mandate of *Weeks*. This is especially true in light of the 1944 amendment to the *Weeks Act*. No exceptions can reasonably or logically be found. In the case of *U. S. v. Standard Brewery*, 251 U. S. 210, 217, 40 S. Ct. 139, 140, 64 L. Ed. 229, the court said:

> Nothing is better settled than in the construction of a law its meaning must *first be sought in the language employed*. If that *be plain*, it is the duty of the Courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. [Emphasis added]

Again, in *U. S. v. Missouri P. R. Co.*, 278 U. S. 269, 277, 49 S. Ct. 133, 136, 73 L. Ed. 322, the court said:

> We are therefore bound by the words employed and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. Construction may not be substituted for legislation.

The Forest Service has rather ingenuously, by the administrative shifting and division of funds, attempted to create doubts and confusion, surrounding clear congressional action.

It is a well settled principle that courts will not draw on some unexpressed spirit outside the bounds of the normal meaning of words. *Addison v. Holly Hill Fruit Products*, 322 U. S. 607, 64 S. Ct. 1215, 88 L. Ed. 1488, 153 A. L. R. 1007, rehearing denied, 323 U. S. 809, 65 S. Ct. 27, 89 L. Ed. 645.

In interpreting a statute, the Supreme Court of the United States has specifically held that courts must construe what Congress has written and cannot add, substract, delete or distort words used. *62 Cases, More*

*or Less, v. U. S.* 340 U. S. 593, 71 S. Ct. 515, 95 L. Ed. 566.

The Forest Service would have this Court add to the provisions of Title 16, § 500, supra, the provision that states may be paid 25% of certain moneys received from the stumpage value of timber sold *except* that states may not be paid any portion of moneys administratively retained by the Forest Service for silvicultural practices. We respectfully submit that the Forest Service improperly asks this Court to revise, add to, and subtract and delete from a specific congressional enactment. The Supreme Court recently reiterated that ". . . it is the job of Congress, not the Board or the Courts" to modify or change congressional acts. *Porter v. N. L. R. B.*, 397 U. S. 99, 90 S. Ct. 821, 826, (1970). *Flood v. Kuhn*, ..... U. S. ....., 32 L. Ed 2d 728, 92 S. Ct. ..... (1972), "It is up to Congress and not the Courts to change the law."

## CONCLUSION

For the foregoing reasons the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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September 12, 1972

## APPENDIX A

## IN THE

# United States Court of Claims

No. 16-71

(Decided June 16, 1972)

## STATE OF ALABAMA

v.

## THE UNITED STATES

*Richard C. Belser*, attorney of record, for plaintiff.

*Arthur D. Smith*, with whom was *Assistant Attorney General Kent Frizzell*, for defendant.

Before COWEN, *Chief Judge*, DURFEE, *Senior Judge*, DAVIS, SKELTON, NICHOLS, and KUNZIG, *Judges*.

ON DEFENDANT'S AND PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT

DURFEE, *Senior Judge*, delivered the opinion of the court:

Plaintiff claims that it is entitled to twenty-five per-centum *of all moneys received* from all sales of forest products from National Forests in Alabama for aid to State schools and public roads, and that the amounts thus made available should be based upon *the stumpage value of the timber*, under Sec. 13 of the Weeks Act,

36 Stat. 963 (1911) as amended, 16 U. S. C. § 500, which provides in pertinent part:

> *Twenty-five per centum of all moneys* received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: * * * In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based *upon the stumpage value of the timber.* [Emphasis supplied.]

Defendant contends that the revenue base, *i.e.*, "stumpage value" from which the twenty-five percent is computed for payment to states for schools and roads *does not include* sale area deposits collected from the purchaser pursuant to the Knutson-Vandenberg Act. Section 3 of this Act, 46 Stat. 527 (1930), 16 U. S. C. § 576(b) provides in pertinent part:

> The Secretary of Agriculture may * * * require any purchaser of national-forest timber *to make deposits of money in addition to the payments for the timber,* to cover the cost to the United States of (1) planting * * * (2) sowing with tree seeds * * * or (3) cutting, destroying, or otherwise removing undesirable trees or other growth, on the national-forest land cut over by the purchaser, in order to improve the future stand of timber: * * *. Such deposits shall be covered into the Treasury and shall constitute a special fund, which is appropriated and made available until expended to cover the cost to

the United States of such tree planting, seed sowing, and forest improvement work, as the Secretary of Agriculture may direct: Provided, That any portion of any deposit found to be in excess of the cost of doing said work shall, upon the determination that it is so in excess, be transferred to miscellaneous receipts, forest reserve fund, as a national-forest receipt of the fiscal year in which such transfer is made * * *. [Emphasis supplied.]

The administration of this statute was vested by the Secretary of Agriculture in the Forest Service, which by long standing administrative practice and regulation, has adopted the following procedures:

Prior to offering a tract of National Forest timber for sale, the conservation and silvicultural needs of a proposed sale area are determined. The cost of reforestation and other sale area betterment work is estimated, and pursuant to the Knutson-Vandenberg Act, *supra,* this estimate is collected from the purchaser (said amount is herein referred to as "K-V deposits"). Until 1959, the purchase ("stumpage") price of the timber and the K-V deposits were collected and handled separately. After 1959, "stumpage rate" was redefined to include K-V deposits by the Forest Service for purposes of administrative convenience.

It has been defendant's consistent practice to deposit initially payments for National Forest timber in a temporary suspense account. As the timber is harvested, the portion of the payments representing K-V deposits is transferred to a special account where it is then available for carrying out sale area betterment work. The balance of the timber payments is periodically transferred to the National Forest Fund. In addition, any

amounts of K-V deposits which are found to be in excess of sale area betterment needs are similarly transferred to the National Forest Fund.

The essence of the dispute arises over the difference in interprepation of "stumpage value of the timber" in the Weeks Act, *supra.*

Plaintiff interprets "stumpage value" in the Weeks Act to mean *all moneys paid* to the United States for the purchase of the timber, and from which it is entitled to twenty-five percentum.

Defendant contends that since the Weeks Act and the Knutson-Vandenberg Act both deal with the same subject matter, and with the same transaction, *i.e.*, the sale of National Forest timber, these two statutes must be interpreted in *pari materia* and we accept this position as being in accord with the legislative intent of the Congress.

The Knutson-Vandenberg Act defines K-V deposits as being "in addition to the payments for the timber." Initially, the procedures adopted by the Forest Service for implementation of the Act, in conjunction with the Weeks Act, kept payments for the timber, then termed "stumpage payments," separate from K-V deposits. In appraising National Forest timber, the amount estimated for sale area betterment work was treated as a cost to the purchaser of harvesting timber. In advertising timber for sale, the amounts of required K-V deposits were listed separately, and stated to be in addition to the payments for timber.

From 1955 through 1965, there were a number of administrative changes in the forms used for advertisement and sale of National Forest timber and in the details of K-V collections. These changes were adopted

"to facilitate administration of timber sales and handling receipts therefrom." As stated in the affidavit of the Director of the Division of Timber Management of the U. S. Forest Service, one such change was the pooling of K-V funds by proclaimed National Forests after 1955. Another such change was the redefinition of "stumpage rate" in 1959 to include deposits for sale area betterment. These and other changes during this period are reflected in current sale procedures.

However, the result obtained either before or after this administrative change is the same. The K-V assessments reduce the money received in payment for the timber itself by the amounts established to perform sale area betterment work in the same way as any other contract condition which makes it more costly for the purchaser to harvest National Forest timber. Instead of the original practice of the purchaser to bid on the "stumpage value" separately from the K-V deposits, the amounts of K-V deposits required for a particular sale area are now deducted from a proportionately higher price bid.

Stumpage value or "stumpage" is commonly defined as "the value or price paid for timber as it stands uncut in the woods; uncut marketable timber." *Webster's Third International Dictionary* 1966. However, in practice, the price paid for National Forest timber is not the actual market price, as generally determined. An appraisal is first made by the Forest Service of the timber in the sale area which is marked for cutting. An estimate is made of the average value of the products which can be produced from the standing timber by an average operator, together with an estimate of the costs of logging and manufacturing (including conservation measures required by contract). A margin for

profit and risk is then deducted from the estimated value of the timber products. This leaves a residual "appraised value" or "stumpage value" which establishes the *minimum amount* the Forest Service will accept from prospective purchasers. This *minimum* appraised "stumpage value" includes, for administrative accounting purposes, the amounts which will be allocated as K-V deposits as well as amounts which will be allocated as payment for the timber. It follows that the states do not actually participate in an allocation of payments for "stumpage value" as determined by competitive bidding in an open timber market without any minimum fixed base price. Plaintiff contends that this practice of the Forest Service results in an "administratively diminished adjustment" by administrative fiat which is "not in accord with the clear Congressional direction." We do not agree.

This long continued administrative practice is in accord with "[The] [p]urposes for which natural forests may be established and administered," 16 U. S. C. § 475, which provides in pertinent part:

> * * * No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and *to furnish a continuous supply of timber for the use and necessities of citizens of the United States* * * *. [Emphasis supplied.]

The State of Alabama and all the other states have collectively an equal interest in this long-term national purpose of conserving our forest resources. They benefit equally from this national purpose, and any excess of K-V deposits required therefor by the Forest Service

goes into the National Forest Fund for percentum distribution to the States.

The Knutson-Vandenberg Act does not require deposits *in addition to the value of the timber*, but rather *"in addition to the payments for timber."* The administrative practice by the Forest Service observes and follows this clear legislative distinction in its allocation of these two separate sources of revenue, *i.e.*, K-V deposits and "payments for timber." The percentage payments to which the States are entitled should be based only upon the Federal revenues which represent payments for timber only, apart from the costs of harvesting timber on a sustained yield basis as administered by the Forest Service for over forty years.

The Forest Service has historically interpreted the Knutson-Vandenberg Act, 16 U. S. C. § 576(b), to define K-V deposits as being in addition to payments for the timber. Thus, except to the extent that it is found to be in excess of sale area betterment needs and, therefore, transferred to the National Forest Fund, money collected for sale area betterment has not been subject to revenue sharing under 16 U. S. C. §§ 500 and 501 nor has such money been taken into account in calculating payments under these statutes. Other similar deposits may be collected from purchasers to reimburse the Government for performing other types of work on sale areas. Like K-V deposits, these moneys are excluded from the National Forest Fund, and thus from percentage payments under 16 U. S. C. §§ 500 and 501. By 16 U. S. C. § 490, the Forest Service is authorized to require brush disposal deposits (B. D. deposits) from timber purchasers. Like K-V deposits,

excess B. D. deposits are to be transferred to the National Forest Fund.[1]

A comparison of the provisions of 16 U. S. C. § 490 (the Brush Disposal Act) with those of § 576(b), (the K-V deposit section), and an examination of the legislative history of the latter, indicates that these two sections should be read in *pari materia*. The Senate Report which accompanied the bill containing the progenitor of § 576(b) for K-V deposits described the language of that section as being analogous to that contained in the Act of August 11, 1916 which authorized "similar *deposits* for the purpose of disposing of brush and other debris resulting from timber-cutting operations on national forests * * *." S. Rep. No. 375, 71st Cong., 2d Sess., 4 (1930). [Emphasis supplied.] The legislative history of 16 U. S. C. § 490 leaves little doubt that the *deposits* to be made for the purpose of brush disposal were merely a substitute for the purchaser's performing this work himself and constituted a "special fund"; moreover, any amounts which were so *deposited* and which were later found to be in excess of the amount required for brush disposal were refunded to the *depositor*. This latter provision was subsequently amended in 1950 to provide that any excess amounts would be *deposited* in the Forest Reserve Fund.

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1. The Act of August 11, 1916, 39 Stat. 462, as amended, 16 U. S. C. § 490 provides:

Purchasers of national-forest timber may be required by the Secretary of Agriculture to deposit the estimated cost to the United States of disposing of brush and other debris resulting from their cutting operations, such *deposits* to be covered into the Treasury and constitute a *special fund*, which is appropriated and shall remain available until expended: *Provided, That any deposits in excess of the amount expended for disposals shall be transferred to miscellaneous receipts, forest-reserve fund, to be credited to the receipts of the year in which such transfer is made.* [Emphasis supplied.]

Section 576(b) also provides for *deposits* to be made to a "special fund," and that these *deposits* are to cover the cost to the United States of performing certain functions directed towards improving the future stand of timber in the area cut over by the purchaser. Moreover, this section specifically provides that *these* deposits are "in addition to the payments for the timber." As in the case of *deposits* made for the purpose of brush disposal, K-V deposits are directly equatable with certain costs incurred by the Government in conserving timber resources in the area in which the purchaser-depositor has been at work. Congress viewed the brush disposal and K-V deposits as being preferable substitutes for requirements for these purposes by the purchaser of National Forest timber. It is only when these deposits are in excess of these actual costs that § 576(b) provides, in the second proviso, that certain portions of the sums so received can be characterized "as a National Forest receipt of the fiscal year in which such transfer [to the Forest Reserve Fund] is made * * *," and, thus, considered "moneys received during any fiscal year from each National Forest" within the meaning of 16 U .S. C. § 500. To hold otherwise would be to ignore the purpose underlying these deposits, the distinction made between deposits and payments for timber, and the second proviso of § 576(b), quoted above.

The last sentence of 16 U. S. C. § 500 as to "stumpage value" does not alter this conclusion. This sentence, added in 1944, was inserted to preclude the Government's having to base percentage payments to the States from the sale of certain forest products upon receipts representing a return of production costs. *Hearings on H. R. 5269 before the Sen. Subcomm. of the Comm. on Appropriations,* 76th Cong., 1st Sess.,

325-26 (1939). This amendment, therefore, in the case of these products, was to further limit the base to which the percentage would be applied and cannot be construed as causing the inclusion in this base of deposits made pursuant to § 576(b). Both *H. R. Rep. No. 1198*, 78th Cong., 2d Sess., 12 (1944) and *S. Rep. No. 803*, 78th Cong., 2d Sess., 17 (1944) said, with respect to the 1944 amendment, that "[u]nder this language the receipts from sales of timber which will be available for percentage distribution under these acts will be limited to the value of uncut stumpage, which appears to have been the purpose of the original legislation, and such revenue will not include receipts based upon the expenditure of Government funds for converting the stumpage into certain other forms."

The affidavit of Paul E. Neff, Director of Timber Management, U. S. Forest Service, establishes that since the enactment of 16 U. S. C. § 576(b), and for over forty years thereafter, the Forest Service has consistently treated K-V deposits as being in addition to moneys which are subject to revenue sharing with States, under 16 U. S. C. § 500. The affidavit also demonstrates that the exclusion of K-V deposits from these revenue sharing provisions is consistent with the treatment of other required or voluntary deposits collected from timber purchasers.

This established administrative practice for over forty years has been made known and clearly explained to Congress repeatedly. *See, e.g., Hearings on H. R. 2968 before Sub. Com. No. 3 of the Comm. on Agriculture*, 81st Cong., 1st Sess., 23 (1949); *Hearings before House Subcomm. on Forests of the Comm. on Agriculture*, 90th Cong., 1st Sess., 109-11 (1967); *Hearings on S. 1385 before the Senate Subcomm. on*

*Public Lands of the Comm. on Interior and Insular Affairs*, 90th Cong., 2d Sess., 20-22 (1968).[2] It has also been a matter of public record as published in the Forest Service Manual, Vol. 3, Title 7.

The law is well established that long standing administrative interpretation of a statute by the agency charged with its execution is entitled to great weight, and if reasonable, should be upheld. In *Udall* v. *Tallman*, 380 U. S. 1, 16 (1965), the Supreme Court said:

> When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. "To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings." *Unemployment Comm'n* v. *Aragon*, 329 U. S. 143, 153. See also *e.g.*, *Gray v. Powell*, 314 U. S. 402; *Universal Battery Co.* v. *United States*, 281 U. S. 580, 583. "Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" *Power Reactor Co.* v. *Electricians*, 367 U. S. 396, 408. * * *

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2. S. 1385 which sought to amend 16 U. S. C. § 500 by providing that twenty-five percent payments be based upon "the total amount paid or deposited by purchasers [including] deposits, sale area betterment deposits, erosion control deposits, and collections under the Act of June 9, 1930 (46 Stat. § 527, 16 U. S. C. § 576)," passed the Senate in 1968 but did not pass the House.

We conclude that under the wording of the Knu
son-Vandenburg Act, its legislative history and its lo
standing interpretation and administration by the Fo
est Service, amounts collected and expended for K-
deposits under the Knutson-Vandenberg Act, are n
to be considered as receipts from the sale of Natio
Forest timber resources subject to the revenue shari
provisions of 16 U. S. C. § 500.

Defendant's motion for summary judgment i
granted, plaintiff's motion for summary judgment i
denied, and the petition is dismissed.

# In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-428

THE STATE OF ALABAMA, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

## OPINION BELOW

The opinion of the Court of Claims (Pet. App. A 5-26) is reported at 461 F.2d 1324.

## JURISDICTION

The judgment of the Court of Claims was entered on June 16, 1972. The petition for a writ of certiorari was filed on September 14, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

## QUESTION PRESENTED

Whether moneys collected for reforestation by the Secretary of Agriculture, pursuant to Section 3 of the Knutson-Vandenberg Act, 16 U.S.C. 576(b), are part of the revenue base from which revenue-sharing payments to States are calculated under Section 13 of the Weeks Act, as amended, 16 U.S.C. 500.

## STATUTES INVOLVED

The Weeks Act, 36 Stat. 963, as amended, as codified in Title 16 U.S.C. 500, provides:

> Twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber.

The Knutson-Vandenberg Act, 46 Stat. 527, as codified in Title 16 U.S.C. 576(b), provides:

> The Secretary of Agriculture may, when in his judgment such action will be in the public interest,

require any purchaser of national-forest timber to make deposits of money in addition to the payments for the timber, to cover the cost to the United States of (1) planting (including the production or purchase of young trees), (2) sowing with tree seeds (including the collection or purchase of such seeds), or (3) cutting, destroying, or otherwise removing undesirable trees or other growth, on the national-forest land cut over by the purchaser, in order to improve the future stand of timber: *Provided,* That the total amount so required to be deposited by any purchaser shall not exceed, on an acreage basis, the average cost of planting (including the production or purchase of young trees) other comparable national-forest lands during the previous three years. Such deposits shall be covered into the Treasury and shall constitute a special fund, which is appropriated and made available until expended, to cover the cost to the United States of such tree planting, seed sowing, and forest improvement work, as the Secretary of Agriculture may direct: *Provided,* That any portion of any deposit found to be in excess of the cost of doing said work shall, upon the determination that it is so in excess, be transferred to miscellaneous receipts, forest reserve fund, as a national-forest receipt of the fiscal year in which such transfer is made: *Provided further,* That the Secretary of Agriculture is authorized, upon application of the Secretary of the Interior, to furnish seedlings and/or young trees for replanting of burned-over areas in any national park.

## STATEMENT

The State of Alabama filed this suit in the Court of Claims alleging that it was entitled to 25 percent of certain sums received by the United States in connection with the sale of timber in national forests located in Alabama. The facts are largely undisputed and are set forth in the comprehensive opinion of the Court of Claims (Pet. App. A 15-26).

The controversy concerns the interpretation of two federal statutes. The Weeks Act, 16 U.S.C. 500, directs that 25 percent of all monies received from each national forest be paid to the States for expenditures on schools and roads in the counties in which national forests are located. The Knutson-Vandenberg Act, 16 U.S.C. 576, provides that the Secretary of Agriculture may require any timber purchaser to make deposits of money *"in addition to the payments for the timber"* (emphasis added) to cover the cost to the United States of reforesting the area to be logged. The Act provides that such deposits "shall constitute a special fund" to be used to cover the cost of such forest improvement work as the Secretary may direct. Amounts, if any, not expended on reforestation or improvement of the sale area are to be transferred to "* * * miscellaneous receipts, forest reserve fund, as a national-forest receipt * * *."

Under long-standing Forest Service practice, the Knutson-Vandenberg deposits ("K-V deposits") are not included in the revenue base from which revenue-sharing payments under the Weeks Act are calculated. The Forest Service first estimates the amounts of K-V deposits necessary for reforestation work prior to al-

lowing timber bids. After bidding and receipt of the monies, the K-V deposits are segregated and placed in a separate account. K-V deposits, if any, found to be in excess of the sale areas' betterment needs are transferred to the National Forest Fund (formerly known as the forest reserve fund) from which the States receive their allotted share.

The State of Alabama contends that, under the Weeks Act, the entire amount of K-V deposits must be included in the revenue base from which the States are entitled to a 25 percent share. The Court of Claims, deciding the case on cross-motions for summary judgment, rejected that contention, holding that "* * * amounts collected and expended for K-V deposits under the Knutson-Vandenberg Act, are not * * * receipts from the sale of National Forest timber resources subject to the revenue sharing provisions of [the Weeks Act] * * *" (Pet. App. A 26).

## ARGUMENT

The decision below dismissing petitioner's claim is correct and presents no question warranting review by this Court.

1. Read together, the Weeks Act and the subsequent Knutson-Vandenberg Act comprise a legislative scheme which provides for revenue sharing, but excludes K-V deposits in order to cover the cost to the United States of producing National Forest revenue. The Knutson-Vandenberg Act plainly states that K-V deposits "shall constitute a special fund * * * to cover the cost to the United States of such tree planting, seed sowing, and

forest improvement work, as the Secretary of Agriculture may direct * * *."

The Knutson-Vandenberg Act also states that "deposits" for sale area betterment are "in addition to the payments for the timber." This language obviously was meant to emphasize that these deposits are not "moneys received" within the meaning of the Weeks Act. Moreover, a proviso in the Knutson-Vandenberg Act requires that K-V deposits in excess of those required to complete sale area betterment work shall "* * * be transferred to miscellaneous receipts, forest reserve fund, as a national-forest receipt * * *." Unless Congress intended K-V deposits to be excluded from the meaning of "moneys received" as specified in the Weeks Act, there was no reason for characterizing only the transferred excess K-V deposits as a "national forest receipt."

As the Court of Claims explains (Pet. App. A 23-24), the 1944 Amendment to the Weeks Act basing state shares in the sales of forest products upon the "stumpage value" of the timber has no effect upon the legal status of K-V funds. This amendment merely limits state shares from sales of processed lumber to 25 percent of the value of the unprocessed timber.

2. Since the passage of the Knutson-Vandenberg Act in 1930, the Forest Service has never treated K-V deposits as subject to the revenue-sharing provisions of the Weeks Act. This long-standing interpretation by the agency charged with the administration of both Acts is entitled to great weight. *Udall* v. *Tallman*, 380 U.S. 1, 16; *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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